

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUTH WIESER,

Plaintiff,

v.

MR. COOPER GROUP, INC., et al.,

Defendants.

No. 2:24-cv-01910-DJC-CSK

ORDER

Defendants have filed a Motion to Dismiss Plaintiff's First Amended Complaint in its entirety, arguing the claims are time-barred and insufficiently pled. Plaintiff has failed to timely oppose or otherwise respond to Defendant's Motion despite numerous warnings from this Court that failure to comply with the Local Rules or this Court's orders could result in sanctions, including dismissal of this action. Plaintiff has also failed to respond to an Order to Show Cause issued by this Court ordering Plaintiff to explain why this action should not be dismissed for failure to prosecute.

Accordingly, given Plaintiff's numerous failures to comply with this Court's orders and the Local Rules, the Court finds that dismissal of this action is appropriate. Plaintiff's First Amended Complaint shall be dismissed for Plaintiff's failure to prosecute, Defendants' Motion to Dismiss shall be denied as moot, and the Clerk of Court shall be directed to close this case.

BACKGROUND

Plaintiff Ruth Wieser filed this action on February 16, 2024, in state court, alleging seven causes of action for (1) negligence, (2) negligent infliction of emotional distress, (3) negligent misrepresentation, (4) intentional infliction of emotional distress, (5) breach of contract, (6) breach of the implied duty of good faith and fair dealing, and (7) wrongful death. (ECF No. 1-1.) Defendants Mr. Cooper Group, Inc. and Joey Khalil removed the action to federal court on July 11, 2024, on the basis of diversity jurisdiction, and moved to dismiss the claims. (ECF Nos. 1, 4.) Plaintiff failed to timely oppose dismissal but sought the Court's leave to file a belated opposition. (ECF No. 8.) The Court granted Plaintiff's request, but admonished Plaintiff that a failure to comply with the Local Rules could be grounds for sanctions. (ECF No. 10.) The Court subsequently dismissed Plaintiff's first through sixth claims on the basis that they were untimely, and seventh claim on the basis that it was inadequately pled. (ECF No. 14.) The Court granted Plaintiff 30 days to file an amended complaint. (*Id.*)

Plaintiff failed to file an amended complaint within 30 days. Accordingly, the Court issued an Order to Show Cause on March 11, 2025, ordering Plaintiff to show cause why the Court should not impose sanctions, including dismissal of the action, for Plaintiff's failure to comply with the Court's orders. (ECF No. 15.) Plaintiff did not respond to the Order to Show Cause but filed a First Amended Complaint seven days thereafter. (ECF No. 16.) Accordingly, the Court discharged the Order to Show Cause but warned Plaintiff that future failures to respond to the Court's orders could result in sanctions. (ECF No. 17.)

Defendants again moved to dismiss Plaintiff's claims on April 1, 2025, arguing Plaintiffs first through sixth claims were untimely and all the claims were insufficiently pled. (ECF No. 19.) Plaintiff failed to timely oppose. Thus, the Court issued another Order to Show Cause on May 15, 2025, ordering Plaintiff to show cause within seven days "why the Court should not construe Plaintiff's failure to file a timely opposition as a non-opposition to Defendant's motion and why this case should not be dismissed

1 for failure to prosecute." (ECF No. 22.) To date, Plaintiff has failed to respond to the
2 Court's Order to Show Cause or otherwise oppose dismissal of her claims.

3 **LEGAL STANDARD**

4 Under Federal Rule of Civil Procedure 41, a court may dismiss an action for
5 failure to prosecute or failure to comply with the Federal Rules of Civil Procedure, the
6 court's local rules, or any order of the court. Fed. R. Civ. P. 41(b); *see also Ferdik v.*
7 *Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) ("Pursuant to Federal Rule of Civil
8 Procedure 41(b), the district court may dismiss an action for failure to comply with any
9 order of the court."); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
10 (dismissal for failure to prosecute and to comply with local rules). This Court's Local
11 Rules are in accord. See E.D. Cal. L.R. 110 ("Failure of counsel or of a party to comply
12 with these Rules or with any order of the Court may be grounds for imposition by the
13 Court of any and all sanctions authorized by statute or Rule or within the inherent
14 power of the Court."). A court may act on its own accord in exercising this authority as
15 district courts have inherent power to control their dockets. *Hells Canyon Preservation*
16 *Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (approving *sua sponte*
17 dismissals under Rule 41(b)); *Thompson v. Housing Auth. of City of L.A.*, 782 F.2d 829,
18 831 (9th Cir. 1986).

19 In determining whether to dismiss an action, the Court must consider several
20 factors: (1) "the public's interest in expeditious resolution of litigation"; (2) "the court's
21 need to manage its docket"; (3) "the risk of prejudice to the defendants"; (4) "the
22 public policy favoring disposition of cases on their merits"; and (5) "the availability of
23 less drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

24 **ANALYSIS**

25 Applying the factors for involuntary dismissal, the Court finds this action should
26 be dismissed. Plaintiff has continually failed to diligently prosecute this action,
27 including by failing to timely oppose two motions to dismiss and failing to timely file
28 an amended complaint. The Court has admonished Plaintiff numerous times for these

1 failures to no avail. (See ECF Nos. 10, 15, 17, 22.) Plaintiff's lack of diligence is
2 particularly distressing given this Court's extremely high caseload, as well as the high
3 caseload in the Eastern District of California generally. Thus, this Court finds that the
4 first and second factors—the public's interest in expeditious resolution of litigation and
5 the Court's need to manage its docket—weigh in favor of dismissal.

6 The third factor—prejudice to defendants—also weighs in favor of dismissal.
7 While this case is little more than a year old, Defendants have been prevented from
8 attempting to resolve this case on the merits by Plaintiff's unreasonable delay in
9 prosecuting this action. Unreasonable delay is presumed to be prejudicial. See, e.g.,
10 *Allen v. Bayer Corp. (In re: Phenylpropanolamine (PPA) Prods. Liab. Litig.)*, 460 F.3d
11 1217, 1227 (9th Cir. 2006).

12 The fifth factor—availability of less drastic sanctions—also favors dismissal. As
13 noted above, the Court has already pursued remedies less drastic than a
14 recommendation of dismissal. See *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 132 (9th
15 Cir. 1987) (“[E]xplicit discussion of alternatives is unnecessary if the district court
16 actually tries alternatives before employing the ultimate sanction of dismissal.”), *cert.*
17 *denied*, *Malone v. Frank*, 488 U.S. 819 (1988). The Court has provided Plaintiff with
18 the opportunity to cure multiple late filings and has advised Plaintiff that she is
19 required to follow this Court's orders as well as the Local Rules. This Court also
20 warned Plaintiff that failure to file a response to Court's latest Order to Show Cause
21 could result in sanctions including dismissal of this action. (See ECF No. 22.) Warning
22 a plaintiff that failure to take steps towards resolution of his or her action on the merits
23 will result in dismissal satisfies the requirement that the court consider the alternatives.
24 See, e.g., *Ferdik*, 963 F.2d at 1262 (“[O]ur decisions also suggest that a district court's
25 warning to a party that his failure to obey the court's order will result in dismissal can
26 satisfy the ‘consideration of alternatives’ requirement.”). At this juncture, the Court
27 finds no suitable alternative to dismissal of this action.

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1 Finally, the Court recognizes the importance of giving due weight to the fourth
2 factor, which addresses the public policy favoring disposition of cases on the merits.
3 However, for the reasons set forth above, factors one, two, three, and five strongly
4 support dismissal of this action, and factor four does not materially counsel otherwise,
5 as dismissal is proper “where at least four factors support dismissal or where at least
6 three factors ‘strongly’ support dismissal.” *Hernandez v. City of El Monte*, 138 F.3d
7 393, 399 (9th Cir. 1998) (citations and quotation marks omitted). Under the
8 circumstances of this case, the other relevant factors outweigh the general public
9 policy favoring disposition of actions on their merits. *See Hells Canyon*, 403 F.3d at
10 689 (approving court’s *sua sponte* dismissal under Rule 41(b) for a plaintiff’s failure to
11 prosecute or comply with the Federal Rules of Civil Procedure or the court’s orders).

12 CONCLUSION

13 In accordance with the above, it is hereby ORDERED:

- 14 1. Plaintiff’s First Amended Complaint (ECF No. 16.) is DISMISSED
15 without prejudice pursuant to Federal Rule of Civil Procedure 41(b);
- 16 2. Defendants’ Motion to Dismiss (ECF No. 19) is DENIED as moot;
- 17 3. All pending hearings are VACATED; and
- 18 4. The Clerk of the Court is directed to close this case and enter
19 judgment accordingly.

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21 Dated: May 27, 2025

/s/ Daniel J. Calabretta

22 THE HONORABLE DANIEL J. CALABRETTA
23 UNITED STATES DISTRICT JUDGE
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